



Federal Deposit Insurance Corporation
3501 Fairfax Drive, Arlington, VA 22226-3500

EXHIBIT 11

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Legal Division

August 27, 2019

By Email to executiveoffice@bankoflouisiana.com

Mr. G. Harrison Scott
Bank of Louisiana
300 St. Charles Avenue
New Orleans, Louisiana 70130

Re: *FOIA Appeal No. 19-0011-A*
Original Request: FOIA Log No. 19-0244
Date of Original Request: July 9, 2019
FOIA/Privacy Act Group Response: July 30, 2019
Appeal Letter Dated: August 2, 2019

Dear Mr. Scott:

By letter dated July 9, 2019, you submitted a request for certain records to the Federal Deposit Insurance Corporation (FDIC) relating to the FDIC's assessment of a civil money penalty against Bank of Louisiana. That records request was processed under the Freedom of Information Act¹ (FOIA).² Staff of the FDIC's FOIA/Privacy Act Group (FOIA Group) responded to that request on July 30, 2019. You appealed that response by letter dated August 2, 2019. For the reasons discussed below, your FOIA administrative appeal is granted in part.

Background

On May 28, 2019, the FDIC Board of Directors approved a Decision and Order to Pay Civil Money Penalty directed to Bank of Louisiana. *In the Matter of Bank of Louisiana, New Orleans, Louisiana*, FDIC Docket No. FDIC-17-0086k. This action was taken by the FDIC Board through the notational voting process, in which FDIC Board Members separately submit their votes on matters rather than voting in a regular meeting.

In your initial July 9, 2019 letter, you referenced the Decision and Order and made the following request for records from the FDIC:

Accordingly, I am requesting a copy of a transcript of the Board Meeting of May 28, 2019. If there is no transcript, could you please furnish the reasons?

¹ 5 U.S.C. § 552.

² Your July 9, 2019 letter was addressed to the Executive Secretary of the FDIC and references 12 C.F.R. § 311.8, the FDIC regulation concerning transcripts and minutes of meetings of the FDIC Board of Directors. Subsections 311.8(c) and (d) provide for public availability of meeting transcripts and minutes. Because, as discussed below, no transcript or minutes were available, your request was forwarded to the FDIC's FOIA/Privacy Act for processing as a FOIA request.

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In the alternative, please send a copy of the minutes of the meeting, together with Notice and any documents.

The FOIA Group's July 30, 2019 response notified you that the requested FDIC agency records did not exist at that time because no transcript or minutes were created:

This [May 28 FDIC Board] meeting was conducted by notational vote and as such, there are no minutes or transcript of the meeting prepared. A "Memorandum of Actions of the Board of Directors of the FDIC" is prepared in these instances. Unfortunately, the Memorandum of Actions of the Board of Directors of the FDIC for the May 28, 2019 notational vote have not yet been finalized. Therefore, as the records you seek do not presently exist, there are no agency records of the FDIC to provide for your request.

. . . You may wish to submit a new FOIA request at a later date, when it is more likely that the Memorandum of Actions of the Board of Directors of the FDIC for May 28, 2019 will be in final form (they generally take about 3 months to finalize).

Three days later, by letter dated August 2, 2019, you submitted an administrative appeal of the FOIA Group's response:

This is an appeal by Bank of Louisiana from a denial to furnish documents and documentation incidental to a Board Meeting on May 28, 2019.

. . . .

On July 19 [sic], 2019, Counsel requested a copy of the transcript or minutes of the May 28, 2019 meeting, together with Notice and any documents.

On July 30, 2019, the Bank was advised that there was no transcript nor any minutes as this was a Notational Meeting and the Board only had a Memorandum of Actions.

To date, Counsel has received no documents and more particularly none incidental to a Memorandum of Actions. . . .

It is respectfully requested that the [FDIC] furnish copies of all documents and documentation incidental to the May 28, 2019 meeting as well as the Memorandum of Actions of the Board.

Discussion

As a preliminary matter, we note that after the issuance of the FOIA Group's July 30 response to your initial request for records, the Memorandum of Actions of the Board of Directors of the FDIC for May 28, 2019, was finalized. Because that memorandum would have been considered for disclosure as responsive to your initial request, that portion of your appeal is

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granted to the extent that the FOIA Group will be asked to review that memorandum and issue a supplemental response.

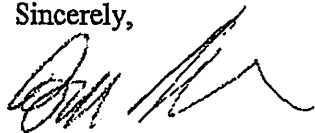
The principal issue raised in your appeal is whether your initial records request of July 9 actually asked for what you describe in your appeal as “documents and documentation incidental to” the subject of your request, the May 28, 2019 FDIC Board approval of the Decision and Order to Pay Civil Money Penalty. We find that your initial request is ambiguous,³ but could be reasonably interpreted as you describe in your appeal. Therefore, your appeal is granted to the extent that the FOIA Group will be asked to reconsider your initial request and issue a supplemental response.

Your request will be re-processed in accordance with FDIC’s usual FOIA procedures, including the possibility that all or portions of responsive records may be withheld under one or more FOIA exemptions.⁴ To the extent that this decision is inconsistent with the relief requested in your appeal, your appeal is denied.

Conclusion

For the reasons discussed above, your appeal is granted in part and denied in part. Because your FOIA appeal has been denied in part, you may seek judicial review in the United States District Court under 5 U.S.C. § 552(a)(4)(B).⁵

Sincerely,



Barbara Katron
Senior Counsel

³ Your July 9, 2019 records request states, in pertinent part:

Accordingly, I am requesting a copy of a transcript of the Board Meeting of May 28, 2019. . . . *In the alternative*, please send a copy of the minutes of the meeting, *together with* Notice and any documents.

(Emphasis added.) As constructed, this paragraph appears to be asking for *either* (i) the transcript, *or* (ii) the minutes plus “Notice and any documents” included with the minutes. It is not evident that you are asking for (i) the transcript or the minutes, *and* (ii) “Notice and any documents.” However, your appeal raises an alternative reading that is not unreasonable. Additionally, the appeal provides some necessary clarification for the meaning and the scope of “Notice and any documents.” With the benefit of this new information, the FOIA Group can reassess your request.

⁴ 5 U.S.C. §552(b)(1)-(9).

⁵ You also may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; email ogis@nara.gov; telephone 202-741-5770; toll free 1-877- 684-6448; facsimile 202-741-5769.